



STATE OF TENNESSEE  
**DEPARTMENT OF COMMERCE AND INSURANCE**  
**SECURITIES DIVISION**

SUITE 680, 500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243-0575  
615-741-2947

**INVESTMENT ADVISER REGISTRATION AND NOTICE FILING INSTRUCTIONS**  
[Revised June 20, 2003]

**I. REGISTRATION OF INVESTMENT ADVISERS**

**A. IARD Eligible Investment Advisers**

1. Submit a Completed Form ADV:
  - a. Submit Form ADV Part 1, including all applicable schedules and DRPs, through the IARD.
  - b. Submit the Paper Version of Form ADV Part 2, including all applicable schedules, directly to the Division. The form must be typed and up-to-date, including the current date on each page. The State-registered Investment Adviser Execution Page must be included and must contain a manual signature.
  - c. Blank forms (including Forms ADV and ADV-W) can be obtained from the Securities and Exchange Commission by calling 202-942-4046, or from the SEC's website at <http://www.sec.gov/about/forms/secforms.htm>. The forms are also available on the Division's website at <http://www.state.tn.us/commerce/securities/IAInstructions.html>.
2. Submit the \$200.00 registration fee through the IARD (from the daily account). The registration fee is neither refundable nor prorated.
3. Organizational Documents: Submit the following documents (only those that are applicable) directly to the Division.
  - a. Corporation
    - (1) Submit a copy of the Articles of Incorporation and all amendments **certified** by the Secretary of State for the state of incorporation.
    - (2) Submit a copy of the Corporate By-laws and all amendments **certified** by the secretary of the corporation.
  - b. Limited Liability Company

(1) Submit a copy of the Articles of Organization and all amendments **certified** by the Secretary of State for the state of organization.

(2) Submit a copy of the L. L. C. Operating Agreement and all amendments **certified** by a managing member of the company.

c. General Partnership

Submit a copy of the General Partnership Agreement and all amendments **certified** by a general partner.

d. Limited Partnership

Submit a copy of the Limited Partnership Agreement and all amendments **certified** by a register of deeds or similar official.

4. Financial Statement:

- a. Submit a balance sheet prepared in accordance with generally accepted accounting principles consistently applied as of a date not more than ninety (90) days prior to the date of such application, which shall demonstrate compliance with the net capital requirement for a registered investment adviser in the state in which the applicant maintains its principal place of business. For purposes of this requirement, "principal place of business" means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.
- b. For any investment adviser who has or will have custody of client funds or securities, or who requires or will require prepayment of more than five hundred dollars (\$500) in advisory fees six (6) or more months in advance, an audited balance sheet must be submitted directly to the Division. If such applicant has not yet had an audit performed pursuant to his first fiscal year of existence, he may submit an unaudited balance sheet in such detail as will disclose the nature and amount of assets and liabilities and the net worth and net capital of the applicant. Such financial statement shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to its correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a designation of accountant to be executed by the accountant so designated to perform the investment adviser's first annual audit.

Pursuant to Rules 0780-4-3-.02(3)(a)2.(ii)(II) and 0780-4-3-.02(4)(a)2, the balance sheet must be certified by an independent certified public accountant or independent public accountant, prepared in accordance with generally accepted accounting principles consistently applied, and accompanied by an opinion of the accountant as to the investment adviser's financial condition which is unqualified, except as to matters which would not have a substantial effect on the financial condition of the investment adviser.

5. Demonstration of Compliance with Capital and Bonding Requirements:

An investment adviser applicant who maintains his principal place of business in another state shall demonstrate compliance with the net capital and bonding requirements of that state by submitting: (a) Evidence of investment adviser registration in that state; (b) a net

capital computation pursuant to the requirements of that state as of a date not more than ninety (90) days prior to the date of submission; and (c) a photocopy of the current bond, if any, as filed to satisfy that state's bonding requirements.

6. Client Agreements:

Submit copies of any client agreements to be used by the applicant for residents of Tennessee.

7. The information required in Items A1b, A3, A4, A5 and A6, above may be submitted in paper format directly to the Tennessee Securities Division at the following address:

Tennessee Securities Division  
Broker-Dealer Section  
500 James Robertson Parkway, Suite 680  
Nashville, TN 37243-0583

**B. Other Investment Adviser Applicants**

1. Completed Form ADV:

- a. Submit the Paper Version of Form ADV Part 1, including all applicable schedules and DRPs, directly to the Division. The form must be typed and up-to-date, including the current date on each page. The State-registered Investment Adviser Execution Page must be included and must contain a manual signature.
- b. Submit the Paper Version of Form ADV Part 2, including all applicable schedules, directly to the Division. The form must be typed and up-to-date, including the current date on each page. The State-registered Investment Adviser Execution Page must be included and must contain a manual signature. When submitting Parts 1 and 2 together, only one execution page is required.
- c. Blank forms (including Forms ADV and ADV-W) can be obtained from the Securities and Exchange Commission by calling 202-942-4046, or from the SEC's website at <http://www.sec.gov/about/forms/secforms.htm>. The forms are also available on the Division's website at <http://www.state.tn.us/commerce/securities/IAInstructions.html>.

2. Registration Fee:

Submit a \$200.00 registration fee. Checks should be made payable to the Tennessee Department of Commerce and Insurance. The registration fee is neither refundable nor prorated.

3. Organizational Documents: (Submit only those that are applicable.)

a. Corporation

- (1) Submit a copy of the Articles of Incorporation and all amendments **certified** by the Secretary of State for the state of incorporation.

(2) Submit a copy of the Corporate By-laws and all amendments **certified** by the secretary of the corporation.

b. Limited Liability Company

(1) Submit a copy of the Articles of Organization and all amendments **certified** by the Secretary of State for the state of organization.

(2) Submit a copy of the L. L. C. Operating Agreement and all amendments **certified** by a managing member of the company.

c. General Partnership

Submit a copy of the General Partnership Agreement and all amendments **certified** by a general partner.

d. Limited Partnership

Submit a copy of the Limited Partnership Agreement and all amendments **certified** by a register of deeds or similar official.

4. Financial Statement:

- a. Submit a balance sheet prepared in accordance with generally accepted accounting principles consistently applied as of a date not more than ninety (90) days prior to the date of such application, which shall demonstrate compliance with the net capital requirement for a registered investment adviser in the state in which the applicant maintains its principal place of business. For purposes of this requirement, "principal place of business" means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.
- b. For any investment adviser who has or will have custody of client funds or securities, or who requires or will require prepayment of more than five hundred dollars (\$500) in advisory fees six (6) or more months in advance, an audited balance sheet must be submitted directly to the Division. If such applicant has not yet had an audit performed pursuant to his first fiscal year of existence, he may submit an unaudited balance sheet in such detail as will disclose the nature and amount of assets and liabilities and the net worth and net capital of the applicant. Such financial statement shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to its correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a designation of accountant to be executed by the accountant so designated to perform the investment adviser's first annual audit.

Pursuant to Rules 0780-4-3-.02(3)(a)2.(ii)(II) and 0780-4-3-.02(4)(a)2, the balance sheet must be certified by an independent certified public accountant or independent public accountant, prepared in accordance with generally accepted accounting principles consistently applied, and accompanied by an opinion of the accountant as to the investment adviser's financial condition which is unqualified, except as to matters which would not have a substantial effect on the financial condition of the investment adviser.

5. Demonstration of Compliance with Capital and Bonding Requirements:

An investment adviser applicant who maintains his principal place of business in another state shall demonstrate compliance with the net capital and bonding requirements of that state by submitting: (a) Evidence of investment adviser registration in that state; (b) a net capital computation pursuant to the requirements of that state as of a date not more than ninety (90) days prior to the date of submission; and (c) a photocopy of the current bond, if any, as filed to satisfy that state's bonding requirements.

6. Client Agreements:

Submit copies of any client agreements to be used by the applicant.

7. The information required in Items B1 – B6 above may be submitted in paper format directly to the Tennessee Securities Division at the following address:

Tennessee Securities Division  
Broker-Dealer Section  
500 James Robertson Parkway, Suite 680  
Nashville, TN 37243-0583

## **II. NOTICE FILING INSTRUCTIONS FOR SEC REGISTERED INVESTMENT ADVISERS**

An investment adviser required to register with the Securities and Exchange Commission pursuant to Section 203 of the Investment Advisers Act of 1940 and that acts as an investment adviser in Tennessee as defined by T. C. A. 48-2-102(7) shall submit a notice filing to the Division through the IARD. The filings herein required shall constitute filings with the Commissioner pursuant to T. C. A. 48-2-121(c).

1. Initial Notice Filing:

An initial investment adviser notice filing shall be filed ten (10) days prior to acting as an investment adviser in Tennessee and shall contain the following:

- a. Submit Form ADV Part 1, including all applicable schedules and DRPs, through the IARD. Form ADV Part 2 is not required to be filed until it is available through the IARD.
- b. Submit the \$100.00 notice filing fee through the IARD (from the daily account). The registration fee is neither refundable nor prorated, however, an investment adviser that has previously paid for a state registration in Tennessee through the IARD during the same calendar year will not be charged the notice filing fee.

2. Renewal Notice Filing:

- a. A renewal notice filing for each successive calendar year shall be filed pursuant to the notice filing renewal procedures of the IARD.
- b. Submit the \$100.00 notice filing fee through the IARD (from the renewal account).

### 3. Withdrawal of Notice Filings:

- a. An investment adviser who has filed notice in Tennessee may withdraw his notice filing at any time by submitting an amended Form ADV Part 1 through the IARD. A Form ADV-W is not required.
- b. An SEC registered investment adviser that terminates his registration with the SEC will automatically have his notice filing withdrawn from Tennessee by the IARD.
- c. All Tennessee notice filings will expire on December 31, unless renewed through the IARD.

## **III. INVESTMENT ADVISER GENERAL PROVISIONS**

### 1. Renewal of Registration:

- a. The investment adviser registration period begins each January 1 and ends each December 31. Unless timely renewed, a registration will expire on December 31.
- b. All investment advisers who are eligible must apply for renewal of registration in Tennessee through the IARD, by complying with the requirements of the IARD. The \$200.00 renewal fee must be submitted through the IARD (from the renewal account).
- c. Applications for renewal of other investment advisers must be submitted directly to the Division and must contain the following:
  - (1) The appropriate renewal form as prescribed by the Division and all information and exhibits required by such form; and
  - (2) A \$200.00 renewal fee. Checks should be made payable to the Tennessee Department of Commerce and Insurance. The renewal fee is neither refundable nor prorated.

### 2. Net Capital Requirements:

- a. Except as provided under Rule 0780-4-3-.01(6)(d), every investment adviser registered or to be registered shall have and maintain a minimum net capital of fifteen thousand dollars (\$15,000).
- b. For purposes of this paragraph, "net capital" shall be defined as total assets less total liabilities (net worth) as computed in accordance with generally accepted accounting principles consistently applied **minus** the following non-allowable assets:
  - (1) In the case of an individual: home equity, home furnishings, automobiles, goodwill, and any other personal item not readily marketable;
  - (2) In the case of a corporation: advances or loans to stockholders, officers, or affiliates, and uncollateralized receivables from stockholders, officers, or affiliates;

(3) In the case of a limited liability corporation: advances or loans to members or affiliates, and uncollateralized receivables from members or affiliates; and

(4) In the case of a partnership: advances or loans to partners or affiliates, and uncollateralized receivables from partners or affiliates.

c. The Division may require that a current appraisal be submitted in order to establish the value of any asset.

d. An investment adviser who has a principal place of business in another state shall not be subject to the net capital requirements of Rule 0780-4-3-.01(6)(a) if:

(1) The investment adviser is licensed as an investment adviser in the state in which he maintains his principal place of business;

(2) The investment adviser is in compliance with the applicable net capital requirement in the state in which he maintains his principal place of business; and

(3) The investment adviser is in compliance with applicable net capital and bonding requirements in the state in which he maintains his principal place of business.

### 3. Custody of Clients Funds or Securities:

a. It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person within the meaning of T. C. A. 48-2-121(b)(2), for any investment adviser in this state who has custody or possession of any funds or securities in which any client has any beneficial interest, to do an act or take any action, directly or indirectly, with respect to any such funds or securities, unless:

(1) All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss; and

(2) (a) All such funds of such clients are deposited in one or more bank accounts which contain only clients' funds;

(b) Such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; and

(c) The investment adviser maintains a separate record for each such account which shows the name and address of the bank where such account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interest in such account; and

(3) Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof; and

- (4) Such investment adviser sends to each client, not less frequently than once every three months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period, and all debits, credits and transactions in such client's account during such period; and
  - (5) Such investment adviser complies with the reporting requirements set forth under Rule 0780-4-3-.02(4)(a)2.
  - (6) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant at a time that shall be chosen by such accountant without prior notice to the investment adviser. A certificate of such accountant stating that an examination of such funds and securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form ADV-E and transmitted to the Division promptly after each examination, unless the investment adviser is not registered with the Division pursuant to T. C. A. 48-2-109(c)(2).
- b. This rule shall not apply to an investment adviser who is also registered as a broker-dealer under Section 15 of the 1934 Act if (a) such broker-dealer is subject to and in compliance with Rule 15c3-1 (Reg. 240.15c3-1) under the 1934 Act, or (b) such broker-dealer is a member of an exchange whose members are exempt from Rule 15c3-1 (Reg. 240.15c3-1) under the provisions of paragraph (b)(2) thereof, and such broker-dealer is in compliance with all rules and settled practices of such exchange imposing requirement with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.
  - c. An investment adviser registered in this state whose principal place of business is located outside this state shall not be subject to the record maintenance requirement of Item A(2)(c) of this paragraph if such investment adviser:
    - (1) is registered or licensed as an investment adviser in the state in which the principal place of business of the investment adviser is located;
    - (2) is in compliance with the books and records requirements of the state in which the investment adviser maintains its principal place of business; and
    - (3) the provisions of Item A(2)(c) of this paragraph would require the investment adviser to maintain books and records in addition to those required under the laws of the state in which the investment adviser maintains its principal place of business.
  - d. Any investment adviser in this state who fully complies with the conditions set forth under Items A(1-5) of this paragraph may take or have custody of any funds or securities of any client.
  - e. Any investment adviser who is not registered with the Division under T. C. A. 48-2-109(c)(2) who fully complies with Rule 206(4)-2 promulgated under the investment Advisers Act of 1940 [17CFR 275.206(4)-2] may take or have custody of any funds or securities of any client.
  - f. As used herein, "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or



managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

4. Broker-dealers who act as Investment Advisers:

- a. A broker-dealer may transact business in Tennessee as an investment adviser if he is appropriately registered as an investment adviser pursuant to Section 203 of the Investment Advisers Act of 1940, provided that the broker-dealer makes the appropriate investment adviser notice filings.
- b. A broker-dealer acting as an investment adviser as defined by T. C. A. 48-2-102(7) who is ineligible to register pursuant to Section 203 of the Investment Advisers Act of 1940 must register separately as an investment adviser with the Tennessee Securities Division.

5. Investment Adviser Representatives:

- a. Investment adviser representative (RA) registration will be required in Tennessee beginning in January 2004. All applications for RA registration must be submitted on Form U4 through IARD. The initial and renewal filing fees are \$50.00.
- b. Applications for RA registration in Tennessee may be filed in IARD by registered and notice filed investment advisers on or after January 1, 2004.

6. Exemptions From Investment Adviser Registration:

Tennessee Securities Rule 0780-4-3-.05 provides that:

*(1) The following persons shall be exempted from the registration requirements for investment advisers set forth in the Tennessee Securities Act of 1980 (Act) in section 48-2-109;*

*(a) Any person domiciled in this state whose only investment advisory clients are Insurance companies; or*

*(b) Any person domiciled in this state who, during the course of the preceding twelve months, has had fewer than fifteen (15) clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act.*

*(2)*

*(a) No person who is a registered agent or a partner, officer, director or principal of a registered broker-dealer is eligible for the exemption under paragraph (1) of this rule.*

*(b) No person who is a partner, officer, director, contracted representative or non-clerical, non-ministerial employee of a registered investment adviser is eligible for the exemption under paragraph (1) of this rule.*

*(3) This rule shall not be construed to exempt any person from the operation of the anti-fraud provisions of the Act.*

## 7. Forms:

- a. Blank uniform forms (including Forms ADV, ADV-E, ADV-H, ADV-NR, and ADV-W) can be obtained from the Securities and Exchange Commission by calling 202-942-4046, or from the SEC's website at <http://www.sec.gov/about/forms/secforms.htm>. The forms are also available on the Division's website at <http://www.state.tn.us/commerce/securities/IAInstructions.html>.
- b. The Designation of Accountant form and the Application for Renewal of Investment Adviser Registration form (for non-IARD registrants only) are available on the Division's website at <http://www.state.tn.us/commerce/securities/IAInstructions.html> or by calling the Division at 615-741-3187.

## **IV. NASAA / NASD Investment Adviser Registration Depository (IARD)**

Pursuant to Tennessee Securities Rule 0780-4-3-.01(3), investment advisers who are eligible must apply for initial registration in Tennessee through the Investment Adviser Registration Depository (IARD). The IARD is a joint effort by the Securities and Exchange Commission (SEC) and the North American Securities Administrators Association (NASAA). The National Association of Securities Dealers, Inc. (NASD), acting as a vendor only, operates the IARD. It is an Internet-based computer system for processing registration applications, notice filings, annual renewals, and related fees. This system presently eliminates paper filings of Part 1 of the Form ADV, allows single filings to satisfy federal and state requirements for federally registered investment advisers, allows automatic fee payments, and offers easier access to information on registrants for the investing public.

The SEC adopted rules mandating that all SEC registered investment advisers use the IARD, beginning January 2001. Please visit <http://www.sec.gov/iard> for more information regarding SEC rules changes. Form ADV Part 1 has been revised to accommodate this electronic format for SEC registration filings, as well as state registration and notice filings. The Paper Version of the complete Form ADV (including the revised Part 1) is available at <http://www.sec.gov/about/forms/secforms.htm>. Form ADV Part 2 has not yet been revised, and must be filed on paper by state-registered investment advisers. The conversion of Form ADV Part 2 to an electronic format in IARD is expected to take place soon.

IARD entitlement packets for state registered investment advisers and new applicants are available on the NASD IARD website at <http://www.iard.com>. After submitting the appropriate forms to the NASD, you will receive further instructions from the NASD regarding the filing of the electronic Form ADV through the IARD. State-registered investment advisers will be charged an initial fee of \$150.00 by the NASD for setting up an IARD user account and an annual user fee of \$100.00 for each year thereafter.

Additional general information regarding the IARD and state investment adviser regulation can be found at the following websites:

[www.iard.com](http://www.iard.com)

[www.sec.gov](http://www.sec.gov)

[www.nasaa.org](http://www.nasaa.org)

<http://www.state.tn.us/commerce/securities/>

## **V. NOTICES**

While these instructions were prepared by the Tennessee Securities Division and were drawn from the Tennessee Securities Act of 1980, as amended, and the Tennessee Securities Rules promulgated under the Act, these instructions do not pre-empt, supersede, or replace the Act and Rules as adopted. These instructions may be amended at any time and are intended to be used solely as a guide for investment adviser registrations and notice filings in Tennessee. The Tennessee Securities Division is not bound by any electronic copy or alteration of this document by other parties. Please direct any questions regarding investment adviser registrations and notice filings to the Tennessee Securities Division, Broker-dealer Section at 615-741-3187 (phone), 615-532-8375 (fax), or [Securities.2@state.tn.us](mailto:Securities.2@state.tn.us) (e-mail). Please visit the Division's website at <http://www.state.tn.us/commerce/securities/>.

The Tennessee Securities Act of 1980 (Tennessee Code 48-2-101 et seq.) may be viewed at <http://www.lexislawpublishing.com/resources> or obtained from the Tennessee Securities Division, upon request.

The Tennessee Securities Rules may be viewed at <http://www.state.tn.us/sos/rules/rules.htm> (Chapter 0780-4) or obtained from the Tennessee Securities Division, upon request.

The Tennessee Securities Act and Rules are also available in the Commerce Clearing House Blue Sky Law Reporter.

**DEFINITIONS** *(This compilation is intended solely as an informal guide – please see the Tennessee Securities Act of 1980, as amended, and the Tennessee Securities Rules promulgated thereunder for the original definitions and the context in which they have been formally adopted.)*

**"Accredited investor"** means accredited investor, as that term is defined in Rule 501 of Regulation D under the Securities Act of 1933 (17 C. F. R. § 230-501), as amended.

**"Act"** means Chapter 866 of the Public Acts of 1980, otherwise known as the Tennessee Securities Act of 1980, as amended, and its codification in Tennessee Code Annotated (T. C. A.).

**"Affiliate"** means a person who, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with, another person.

**"Agent"** means any individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities from, in, or into this state. A partner, officer, director, or manager of a broker-dealer, or a person occupying similar status or performing similar functions, is an agent only if such person otherwise comes within this definition or receives compensation specifically related to purchases or sales of securities from, in, or into this state. "Agent" does not include such other persons not within the intent of this definition as the commissioner may, by rule, exempt from this definition as not in the public interest and necessary for the protection of investors.

**"Assistant Commissioner"** means the Assistant Commissioner for the Division of Securities of the Department of Commerce and Insurance of the State of Tennessee, or any successor person authorized to exercise similar functions.

**"Broker-dealer"** means any person engaged in the business of effecting transactions in securities for the account of others, or any person engaged in the business of buying or selling securities issued by one (1) or more other persons for such person's own account and as part of a regular business rather than in connection with such person's investment activities. "Broker-dealer" does not include:

(A) Issuers, except to the extent provided in T. C. A. 48-2-110(f);

(B) An agent;

(C) An institutional investor;

(D) A person who has no place of business in this state and who is registered as a broker-dealer with the securities and exchange commission or the National Association of Securities Dealers if:

(i) The person effects transactions in this state exclusively with or through:

- (a) The issuers of the securities involved in the transactions;
- (b) Other broker-dealers; or
- (c) Institutional investors; or
- (ii) During any period of twelve (12) consecutive months, the person does not effect more than fifteen (15) transactions in securities from, in, or into this state [other than to persons specified in subdivision (D)(i)]; or
- (E) Such other persons not within the intent of this definition as the commissioner may, by rule, exempt from this definition as not in the public interest and necessary for the protection of investors;

**"Canadian retirement account"** means a trust or other arrangement, including, but not limited to, a "registered retirement savings plan" or "registered retirement income fund" administered under Canadian law, that is managed by the natural person who contributes to, or is or will be entitled to receive the income and assets from such account.

**"Commissioner"** means the Commissioner of the Tennessee Department of Commerce and Insurance.

**"Control,"** including **"controlling," "controlled by,"** and **"under common control with,"** means the possession, directly or indirectly, of the power to direct or compel the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

**"Covered security"** means any security:

- (A) Listed or authorized for listing on the New York Stock Exchange or the American Stock Exchange, or listed on the National Market System of the NASDAQ Stock Market (or any successor to such entities);
- (B) Listed or authorized for listing on a national securities exchange (or tier or segment thereof) that has listing standards that the securities and exchange commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subdivision (A);
- (C) That is a security of the same issuer that is equal in seniority or that is a senior security to a security described in subdivision (A) or (B);
- (D) Issued by an investment company that is registered or that has filed a registration statement under the Investment Company Act of 1940;
- (E) Sold to qualified purchasers, as defined by the securities and exchange commission; or
- (F) That is issued in connection with a transaction that is exempt from registration under the Securities Act of 1933 pursuant to:
  - (i) Paragraph (1) or (3) of § 4 of the Securities Act of 1933, and the issuer of such security files reports with the securities and exchange commission pursuant to § 13 or 15(d) of the Securities and Exchange Act of 1934, as amended;
  - (ii) Section 4(4) of the Securities Act of 1933;

(iii) Section 3(a) of the Securities Act of 1933, other than the sale of a security that is exempt from such registration pursuant to paragraph (4) or (11) of § 3(a) of the Securities Act of 1933, except that a municipal security that is exempt from registration under the Securities Act of 1933 pursuant to paragraph (2) of § 3(a) of that act is not a "covered security" with respect to the sale of such security in Tennessee if the issuer of such security is located in Tennessee;

(iv) Securities and Exchange Commission rules or regulations issued under paragraph (2) of § 4 of the Securities Act of 1933.

**"CRD System"** (also known as "CRD" and/or "Web CRD") means the NASAA/NASD Central Registration Depository.

**"Division"** means the Assistant Commissioner, staff, employees, and agents of the Securities Division of the Department of Commerce and Insurance of the state of Tennessee or such other agency as shall administer the Act or any successor statute.

**"Government Securities Broker-dealer"** means a broker-dealer who effects transactions only in securities issued or guaranteed by the United States of America or an instrumentality thereof.

**"IARD"** means the Investment Adviser Registration Depository as operated by the NASD in cooperation with NASAA, other states, and the United States of America.

**"Institutional investor"** means a bank [unless the bank is acting as a broker-dealer as such term is defined in § 48-2-109(a)], trust company, insurance company, investment company registered under the Investment Company Act of 1940, as amended, a holding company which controls any of the foregoing, a trust or fund over which any of the foregoing has or shares investment discretion, a pension or profit-sharing plan, an institutional buyer (as the commissioner may further define by rule), or any other person engaged as a substantial part of its business in investing in securities unless such other person is within the definition of a broker-dealer (in which case such other person is not an institutional investor), in each case having a net worth in excess of one million dollars (\$1,000,000).

**"Investment adviser"** means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, buying, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(A) A bank (unless it is acting as an investment adviser for a registered investment company), savings institution, or trust company;

- (B) A lawyer, accountant, engineer, or teacher whose performance of investment advisory services is solely incidental to the practice of such lawyer's, accountant's, engineer's or teacher's profession;
- (C) A broker-dealer whose performance of investment advisory services is solely incidental to the conduct of such person's business as a broker-dealer and who receives no special compensation for such services;
- (D) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
- (E) A person who has no place of business in this state if:
  - (i) The person's only clients in this state are other investment advisers, broker-dealers, or institutional investors; or
  - (ii) During any period of twelve (12) consecutive months, the person does not direct business communications into this state in any manner to more than five (5) clients [other than those specified in subdivision (E)(i)], whether or not such person or any of the persons to whom the communications are directed are then present in this state; or
- (F) Such other persons not within the intent of this definition as the commissioner may, by rule, exempt from this definition as not in the public interest and necessary for the protection of investors.

**"Investment adviser representative"** means any partner, officer, or director of (or person occupying a similar status or performing similar functions) an investment adviser, or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser and does any of the following:

- (A) Makes any recommendation or otherwise renders advice regarding securities;
- (B) Manages accounts or portfolios of clients;
- (C) Determines which recommendation or advice regarding securities should be given;
- (D) Solicits, offers or negotiates for sale of or sells investment advisory services; or
- (E) Supervises employees who perform any such actions;

"Investment adviser representative" does not include such other persons not within the intent of this definition as the commissioner may, by rule, exempt from this definition as not in the public interest and necessary for the protection of investors.

**"Issuer"** means every person who issues any security, except that:

- (A) With respect to certificates of deposit, voting-trust certificates, collateral-trust certificates, certificates of interest or shares in an unincorporated investment trust which is of the fixed, restricted management or unit type or which does not have either a board of directors or persons performing similar functions, "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement under which such securities are issued;
- (B) With respect to equipment-trust certificates or like securities, "issuer" means the person by whom the property is or is to be used; and
- (C) With respect to a fractional undivided interest in oil, gas, or other mineral rights, "issuer" means the owner of such right or of an interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of sale.

Any person who acts as a promoter for or on behalf of a corporation, trust, or unincorporated association or partnership of any kind to be formed shall be deemed to be an issuer of preincorporation subscriptions or certificates.

**"NASAA"** means the North American Securities Administrators Association, Inc.

**"NASD"** means the National Association of Securities Dealers, Inc. and/or the National Association of Securities Dealers Regulation, Inc.

**"NASDAQ/NMS"** means the National Association of Securities Dealers Automated Quotation National Market System.

**"Person"** means a natural person, a sole proprietorship, a corporation, a partnership, an association, a limited liability company, a joint-stock company, a trust, a governmental entity or agency, or any other unincorporated organization.

**"Promoter"** means:

(A) Any person who, acting alone or in conjunction with one (1) or more persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer; or

(B) Any person who, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, ten percent (10%) or more of any class of securities of the issuer or ten percent (10%) or more of the proceeds from the sale of any class of securities, provided that a person who receives such securities or proceeds, either solely as underwriting commissions or solely in consideration of property, shall not be deemed a promoter within the meaning of this definition if such person does not otherwise take part in founding and organizing the enterprise.

**"Sale," "sell," "offer," and "offer to sell,"** mean:

(A) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(B) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(C) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other property is considered to constitute part of the subject of the purchase and to have been offered and sold for value;

(D) A purported gift of an assessable security is considered to involve an offer and sale;

(E) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert such security into another



security of the same or another issuer, is considered to include an offer of the other security;

(F) The terms listed in this definition do not include any bona fide:

(i) Gift, other than as set forth in subdivision (D);

(ii) Transfer by death;

(iii) Transfer by termination of a trust;

(iv) Pledge or security loan;

(v) Stock split or reverse stock split;

(vi) Security dividend, whether the security is issued by the same or another company, if nothing of value is surrendered by security holders for the security dividend other than the right to a cash or property dividend where each security holder may elect to take the dividend in cash or property or in stock;

(vii) Act incident to a class vote by stockholders, pursuant to the charter or the applicable corporation statute, on a merger, consolidation, recapitalization, or sale of assets in exchange for securities of another corporation; or

(viii) Act incident to a judicially approved transaction in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or part in such exchange and partly for cash.

**"SEC"** means the Securities and Exchange Commission of the United States of America or its staff, as appropriate.

**"Security"** means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, a life settlement contract (as defined in T. C. A. 56-50-102), or any fractional or pooled interest in a life insurance policy or life settlement contract, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. *"Security" shall include the practice of "equity funding", "security funding" or "life funding" whereby mutual fund shares and insurance contracts are sold as a package with mutual fund shares being pledged as collateral for loans, the proceeds of which are used to pay the premium on life insurance policies.*

"Security" does not include:

(A) Currency;

(B) A check (certified or not), draft, bill of exchange, or bank letter of credit;

(C) A note or other evidence of indebtedness issued in a mercantile or consumer, rather than an investment, transaction;

(D) An interest in a deposit account with a bank or a savings and loan association; or

(E) An insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

**"Senior security"** means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

**"Solicitor"** (regarding investment adviser solicitations) means any person who, directly or indirectly, solicits any client for, or refers any client to an investment adviser.

**"State"** means any state, territory, or possession of the United States of America, the District of Columbia, and Puerto Rico.

**"UAPA"** means the Uniform Administrative Procedures Act as set forth in T. C. A. 4-5-101, et seq., and any rules promulgated thereunder to the extent such rules are not inconsistent with the Act or these rules.

**"Underwriter"** means any person who has purchased from an issuer or an affiliate of an issuer with a view to, or who sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking, provided that a person shall be presumed not to be an underwriter of a security which such person has owned beneficially for two (2) years or more, and further provided that a broker-dealer shall be presumed not to be an underwriter with respect to any security which does not represent part of an unsold allotment to or subscription by the broker-dealer as a participant in the distribution of such security, and further provided that in the case of any security acquired on the conversion of another security without payment of additional consideration, the length of time such convertible security has been beneficially owned by such person shall include the period during which such convertible security was beneficially owned and the period during which the security acquired on conversion was beneficially owned.



STATE OF TENNESSEE  
**DEPARTMENT OF COMMERCE AND INSURANCE**  
**SECURITIES DIVISION**

SUITE 680, 500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243  
615-741-2947

**PROFESSIONAL PRIVILEGE TAX**

Pursuant to Tennessee Code Annotated 67-4-1701 et seq., certain licensed and/or registered professionals, including **BROKER-DEALERS, BROKER-DEALER AGENTS, and INVESTMENT ADVISERS**, are subject to an annual \$400.00 Professional Privilege Tax. This tax is in addition to any registration or renewal fees under the Tennessee Securities Act of 1980, and is collected separately by the Tennessee Department of Revenue.

The Professional Privilege Tax is due on June 1 of each year. Tax returns will be mailed by the Tennessee Department of Revenue to each registered **BROKER-DEALER, BROKER-DEALER AGENT, and INVESTMENT ADVISER** prior to June 1 of each year.

DO NOT SEND PROFESSIONAL PRIVILEGE TAX RETURNS OR PAYMENTS TO THE TENNESSEE SECURITIES DIVISION OR THE NASAA/NASD CENTRAL REGISTRATION DEPOSITORY.

You may contact the Tennessee Department of Revenue at the following address and telephone numbers for further information regarding the Professional Privilege Tax:

Tennessee Department of Revenue  
500 Deaderick Street  
Andrew Jackson Building  
Nashville, Tennessee 37242

**INSIDE TENNESSEE: 800-342-1003**  
**OUTSIDE TENNESSEE: 615-253-0600**

**E-MAIL: [TN.Revenue@state.tn.us](mailto:TN.Revenue@state.tn.us)**  
**WEBSITE: <http://www.state.tn.us/revenue/>**